163 U S 698

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 205.

THE NORTHERN PACIFIC RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

RALPH PETERSON.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED JANUARY 5, 1893.

(15,239.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 9, 1895.

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a Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the adjourned May session, 1892, of the October term, 1891, of said court, begun and held at the United States court-house, in the city of St. Paul, Minnesota, on the fifth Monday in May, to wit, the thirtieth day of May, A. D. 1892, before the Honorable Henry C. Caldwell and Honorable Walter H. Sanborn, circuit judges, and Honorable Oliver P. Shiras, district judge.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

Attest: JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

Be it remembered that heretofore, to wit, on the twenty-third day of March, A. D. 1892, a transcript of record in pursuance of a writ of error directed to the circuit court of the United States for the district of Minnesota was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit; which said transcript of record is in the words and figures following, to wit:

1 United States of America to Ralph Peterson, Greeting:

You are hereby cited and admonished to be and appear in the United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the United States circuit court, dist. of Minnesota, 3rd div., wherein The Northern Pacific Railroad is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable R. R. Nelson, judge of the U. S. circuit court for the dist. of Minnesota, this 23d day of January, A. D. 1892.

R. R. NELSON,
Judge of U. S. Circuit Court.

Original. United States circuit court of appeals, eighth circuit. N. P. R. R. Company, plaintiff in error, *vs.* Ralph Peterson. Citation. Service of the within citation is hereby admitted at St. Paul, Minnesota, on this 23rd day of January, A. D. 1892. Erwin & Wellington, att'ys for Ralph Peterson. Filed Jan'y 23, 1892. Oscar B. Hillis, clerk. —— ——, att'y for plaintiff in error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the circuit court of the United States, district of Minnesota, third division, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before

you at the June term, 1891, thereof, between Ralph Peterson, plaintiff, and The Northern Pacific Railroad Company, defendant, a manifest error hath happened, to the great damage of the said Northern Pacific Railroad Company, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals, for the eighth circuit, together with this writ, so that you have the said record and proceedings aforesaid at the city of St. Louis, Missouri, and filed in the 2 office of the clerk of the United States circuit court of appeals, for the eighth circuit, on or before the 23d day of March, 1892, to the end that the record and proceedings aforesaid being inspected, the United States circuit court of appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Seal of U. S. Circuit Court, Dist. of Minnesota, Third Division.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 23rd day of January, in the year of our Lord one thousand eight hundred and ninety-two.

Issued at office in St. Paul, Minnesota, with the seal of the United States circuit court, district of Minnesota, and dated as aforesaid.

OSCAR B. HILLIS,
Clerk of United States Circuit Court,
District of Minnesota.

Allowed by—
R. R. NELSON, *Judge.*

United States circuit court of appeals, eighth circuit. N. P. R. R. Company, plaintiff in error, *vs.* Ralph Peterson. Writ of error. ——— ———, att'y for plaintiff in error.

UNITED STATES OF AMERICA, *District of Minnesota,* } *ss:*

In obedience to the command of the within writ, I herewith transmit to the United States circuit court of appeals a duly certified transcript of the record and proceedings in the within-entitled case, with all things concerning the same.

Seal of U. S. Circuit Court, Dist. of Minnesota, Third Division.

In witness whereof, I have hereunto subscribed my name and affixed the seal of the circuit court of the United States in and for the district of Minnesota, third division.

OSCAR B. HILLIS,
Clerk of said U. S. Circuit Court.

Know all men by these presents: that we, The Northern Pacific Railroad Company, by Tilden R. Selmes, its attorney, as principal, and The Saint Paul Title Insurance & Tuust Company, of Saint Paul, Minnesota, as surety, are held and firmly bound unto Ralph Peterson in the full and just sum of eight thousand ($8,000.00) dollars, to be paid to the said Ralph Peterson, his heirs, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, execu-
3 tors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-third day of January, in the year of our Lord one thousand eight hundred and ninety-two.

Whereas, lately, at the June term of the U. S. circuit court, district of Minnesota, third division, in a suit pending in said court between Ralph Peterson, plaintiff, and The Northern Pacific Railroad Company, defendant, judgment was rendered against said defendant, and the said defendant has obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Ralph Peterson, citing and admonishing him to be and appear in the United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, sixty days from and after the date of said citation:

Now, the condition of the above obligation is such that if the said Northern Pacific Railroad Company shall prosecute said writ of error to effect, and answer all damages and costs if it fail to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

NORTHERN PACIFIC RAILROAD COMPANY,
By TILDEN R. SELMES, *Its Attorney.*
ST. PAUL TITLE INSURANCE & TRUST CO.,
By ROB'T R. DUNN, *Vice-President.*

Attest:
[SEAL.] L. H. CASE, *Ass't Secretary.*

In presence of—
EDWIN IRLE.
C. R. WILKINSON.

Indorsed: Supersedeas bond. Approved, R. R. Nelson, judge. Filed Jan'y 23rd, 1892. Oscar B. Hillis, clerk.

UNITED STATES OF AMERICA:

RALPH PETERSON, by FRANK E. ENCELL, His Guardian *ad Litem*, Plaintiff,
vs.
THE NORTHERN PACIFIC RAILROAD COMPANY, Defendant.

Pleas before the honorable, the judges of the circuit court of the United States of America, for the district of Minnesota, of the June

term, A. D. 1891, of said court, held in the city of St. Paul, in said district, in the year of 1891.

DISTRICT OF MINNESOTA, *ss:*

Be it remembered that on this 14th day of August, A. D. 1890, came the plaintiff, by his attorneys, and filed in the clerk's
4 office of said court his bill of complaint in words and figures as follows, to wit:

United States Circuit Court, District of Minnesota.

RALPH PETERSON, by FRANK E. ENCELL, His Guardian *ad Litem*, Plaintiff,
against
THE NORTHERN PACIFIC RAILROAD COMPANY, Defendant.

The plaintiff, complaining of the defendant in the above-entitled action, alleges—

That the plaintiff is a minor under the age of twenty-one years, to wit, of the age of twenty years.

That Frank E. Encell is the duly appointed guardian *ad litem* of said plaintiff.

That the defendant is now, and was, at all the times hereinafter named, a corporation duly created and organized for the purpose of operating a railway, and existing under and by virtue of the laws of the United States, and as such corporation engaged in the business of operating and running trains upon its said railway tracks between the city of St. Paul, Minnesota, and a station on said track called Martin, located in the State of Washington.

That plaintiff resides in and is a citizen of the State of Wisconsin.

That on and prior to the 14th day of March, 1890, the said Ralph Peterson was, and for a long time prior thereto had been, in the employ of defendant as a brakeman, and was particularly employed on said day as a brakeman on a certain train operated by defendant on its said track between two stations, to wit, between a station named Easton and the said station named Martin, on what is termed the Cascade division, on defendant's said railway, in the State of Washington for the purpose of clearing snow from such track.

That it became necessary in operating the train on which plaintiff was employed as such brakeman, to stop the same on a certain bridge between the two stations aforesaid, and on what is termed a mountain, or hill, over which the said track of defendant is graded; that in the due performance of his duty as such brakeman, and under the orders from the conductor in charge of said train, the said Ralph Peterson was in the act of setting a brake on the rear car of such train when another and different train, then and there operated by the defendant, ran into and collided with the train on which said Ralph Peterson was employed, and by reason of the shock he was violently hurled from his position on such car and

was run over by the said last-named train and his left arm thereby cut off below the elbow.

That by the rules of said company it is substantially provided that two trains are not allowed to proceed up the said hill at the same time.

That in violation of said rules, and in a reckless, careless and grossly negligent manner the conductor in charge of the said last-named train so operated the same that it run into and collided with the train on which said Peterson was so employed, and did thereby cause the injuries aforesaid.

That said conductor then and there had charge of such train and had command of the movements thereof, and had control of the persons employed upon it, and authority and right so to command and control was given and conferred upon such conductor by the said defendant.

That both the said trains were headed in the same direction and the locomotive of said last-named train collided with the rear car upon which plaintiff was employed.

That in addition to the permanent loss of his left arm plaintiff received a severe and dangerous shock to his spine, whereby he has ever since suffered and is injured for life.

That in all that plaintiff did he was acting with due care and caution on his part and in the performance of his duty as an employé of the defendant, and that his said injuries were caused solely by reason of the negligence, recklessness and carelessness of the conductor in charge of the last-named train, in operating the same in such manner and in violation of the rules of the company, so to cause the same to collide with the train on which plaintiff was employed.

That said last-named train, at the time of such collision, was running at the speed of at least 14 miles per hour.

That prior to the accident the said Ralph Peterson was in good health and able to perform manual labor and thereby earned at least seventy-five dollars per month.

That by reason of the injuries aforesaid he is totally incapacitated to perform any physical or manual labor whatever, and by reason of the premises he has been damaged in the sum of twenty thousand dollars.

Wherefore the plaintiff demands judgment against the defendant in the sum of twenty thousand dollars besides costs and disbursements in his behalf expended.

Dated this 9th day of June, A. D. 1890.

ERWIN & WELLINGTON,
Attorneys for Plaintiff.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Ralph Peterson, came before me personally, and being duly sworn, doth say that he is the plaintiff in the above-entitled action and acquainted with the facts; that the foregoing pleading is true, of his own knowledge, except as to those matters which are therein

stated on his information and belief and as to those matters, that he believes it to be true.

RALPH PETERSON.

Subscribed and sworn to before me on this 9th day of June, A. D. 1890.

[NOTARIAL SEAL.] JOHN H. SANBORN,
Notary Public, Ramsey County, Minn.

Indorsed: Complaint. Filed Aug. 14th, 1890. Oscar B. Hillis, clerk.

And on the same day the following summons was issued, to wit:

Summons.

UNITED STATES OF AMERICA, } ss:
District of Minnesota, Third Division, }

In the Circuit Court of the United States for the District of Minnesota.

RALPH PETERSON, by FRANK E. ENCELL, His Guardian *ad Litem*,
against
THE NORTHERN PACIFIC RAILROAD COMPANY.

The President of the United States of America to the defendant above named, Greeting:

You are hereby summoned and required to answer the complaint in this action, which has been filed in the office of the clerk of this court, in Saint Paul, county of Ramsey and State of Minnesota, and file your answer in said clerk's office within twenty days after the service hereof, excluding the day of such service, and if you fail to answer the complaint as aforesaid, the plaintiff will have the amount he is entitled to recover ascertained by the court, or
7 under its direction, and take judgment for the amount so ascertained; besides the costs and disbursements of this action.

For the marshal of the district of Minnesota to execute.

Witness, the Hon. Melville W. Fuller, Chief
[SEAL OF COURT.] Justice of the Supreme Court of the United States of America, this 14th day of August, A. D. 1890.

Issued at my office in the city of St. Paul, under the seal of said circuit court, the day and year last aforesaid.

OSCAR B. HILLIS, *Clerk*,
By —— ——, *Deputy*.
ERWIN & WELLINGTON,
Plaintiff's Attorneys.

UNITED STATES OF AMERICA, *District of Minnesota*, } ss:

I hereby certify and return that I served the annexed sunnons on the therein-named The Northern Pacific Railroad Company by handing to and leaving with Jno. C. Ballitt, att'y, a true and correct copy thereof personally at St. Paul in said district on the 15th day of August, A. D. 1890.

J. C. DONAHOWER,
U. S. Marshal,
By J. A. CAMPBELL, *Deputy*.

Marshal's fees, $2.12.

Indorsed: Summons. Filed Aug. 20th, 1890. Oscar B. Hillis, clerk.

And on the same day the following appointment of guardian was filed of record in said cause, to wit:

United States Circuit Court, District of Minnesota.

RALPH PETERSON, by FRANK E. ENCELL, His Guardian *ad Litem*, Plaintiff,
vs.
THE NORTHERN PACIFIC RAILROAD COMPANY, Defendant.

I, Ralph Peterson, an infant, aged 20 years, hereby petition the court to appoint Frank E. Encell as my guardian *ad litem* in the above-entitled action.

RALPH PETERSON.

8 I, Frank E. Encell, hereby consent to become guardian *ad litem* to the above-named Ralph Peterson.

FRANK E. ENCELL.

On reading the complaint herein and the above petition and consent, the above-named Frank E. Encell is hereby appointed guardian *ad litem* for the above-named Ralph Peterson.

By the clerk:

[SEAL OF COURT.] OSCAR B. HILLIS, *Clerk*.

Dated this 14th day of August, 1890.

Indorsed: Appointment of F. E. Encell, guardian *ad litem*. Filed Aug. 14th, 1890. Oscar B. Hillis, clerk.

And on the 23rd day of January the following answer was filed of record in said cause, to wit:

Answer.

United States Circuit Court, District of Minnesota.

RALPH PETERSON, by FRANK E. ENCELL, His Guardian *ad Litem*, Plaintiff,
vs.
NORTHERN PACIFIC RAILROAD COMPANY, Defendant.

For answer to the complaint of the plaintiff in the above-entitled action defendant denies that it had any knowledge or information sufficient to form a belief as to whether said plaintiff is a minor under the age of 21 years or not. Defendant admits that it is a corporation substantially as alleged in said complaint; admits that the plaintiff is a resident of the State of Wisconsin; admits that said plaintiff was on the 14th day of March, 1890, and prior thereto, in the employ of said defendant.

And for further answer defendant denies each and every allegation in said complaint contained and every part *ther* thereof, except as hereinbefore expressly admitted, qualified or denied. And defendant further specifically denies that by reason of any of the matters or things in said complaint contained said plaintiff has been damaged in the sum of twenty thousand ($20,000.00) dollars or any other sum whatsoever.

Wherefore said defendant prays to be hence dismissed for its costs and disbursements in this action.

Dated September 3rd, 1890.

JNO. C. BULLITT, JR.,
TILDEN R. SELMES,
Defendant's Attorneys, St. Paul, Minn.

9 STATE OF MINNESOTA, *County of Ramsey,* } ss:

Tilden R. Selmes came before me personally, and, being duly sworn, doth say that he is an officer, to wit, ass't counsel of def't in the above-entitled action; that the foregoing answer is true to his own knwo-edge, except as to those matters therein stated on his information and belief, and as to those matters that he believes it to be true.

TILDEN R. SELMES.

Subscribed and sworn to before me on this 3rd day of September, A. D. 1890.

[NOTARIAL SEAL.] EDWIN IRLE,
Notary Public, Ramsey County, Minnesota.

Due service of within answer admitted this 3rd day of September, 1890.

ERWIN & WELLINGTON,
Plaintiff's Att'ys.

Filed Jan'y 23, 1891.

OSCAR B. HILLIS, *Clerk.*

And on the 23rd day of July, 1891, the following stipulation waiving a jury and stipulation of facts was filed of record in said cause, to wit:

United States Circuit Court, District of Minnesota.

RALPH PETERSON, an Infant, etc., Plaintiff,
vs.
NORTHERN PACIFIC RAILROAD COMPANY, Defendant.

It is hereby stipulated by and between the parties to the above-entitled cause that a jury be and hereby is *is* wa-ved on the trial of the same, and that the same shall be submitted to the court upon the stipulation of facts made in said cause and without a jury.

Dated July 23, 1891.

ERWIN & WELLINGTON,
Attorneys for Plaintiff.
JNO. C. BULLITT,
Attorney for Defendant.

Indorsed: Stipulation waiving a jury. Filed July 23rd, 1891. Oscar B. Hillis, clerk.

10 United States Circuit Court, District of Minnesota, Third Division.

RALPH PETERSON, by FRANK E. ENCELL, His Guardian *ad Litem*, Plaintiff,
vs.
NORTHERN PACIFIC RAILROAD COMPANY, Defendant.

It is hereby stipulated and agreed between the parties hereto that the facts in this case, in addition to those facts established by the pleadings, are as follows:

The plaintiff was on March 14th, 1890, in the employ of the defendant as a brakeman, and had been so employed in the capacity for some time prior thereto. His duties were those ordinarily and usually pertaining to that branch of railway employment, and he was competent and skilful in every way, and familiar with the method of operating trains over said road, and also familiar with the defendant's rules.

On said date he started out as a brakeman upon a train, hereafter designated as train one, running from Easton, a point on defendant's railway in Washington, westwardly in said State of Washington, said train went out over defendant's railway for the purpose of testing what is called and known as a "widener," an appliance designated to remove snow from the side of the railway tracks.

At the time in *w*uestion there was a large quantity of snow accumulated upon and along the defendant's railway tracks.

Said train was being operated by what is known as telegraphic orders. The method of operating trains in this way was known to

plaintiff. The rules of defendant for such operating are found on pages 36 to 49 inclusive of defendant's rule book, and are number-114 to 136 inclusive, and are hereby made a part of this stipulation as fully as if set out in full herein.

The orders under which said train left Easton and ran westwardly on the defendant's road, and the facts relating to the accident are stated in the affidavit of George E. Fewlas, hereto attached and made a part of this stipulation. Said order was issued by the train-dispatcher of defendant, located at Ellensburgh, Washington, who had charge of the operation of said train, and also of the train which ran into said train one, hereafter designated as train two, over said railway.

After train one had left Easton, train two also left said Easton and proceeded westward, and by the negligence of the conductor and engineer of said train two, ran into said train one, as described in the affidavit of Fewlas. The negligence of the conductor and engineer of said train two was the proximate cause of the injury complained of, in not observing the instructions contained
11 in said order given to them by said train-dispatcher. Said order was duly given to the conductor and engineer of train one and train two before either of said trains left Easton, the conductor of train one being Fewlas and the conductor of train two being Ellis.

The damages sustained by plaintiff by reason of the loss of his arm are agreed upon by the parties as being four thousand dollars ($4,000.00).

It is further stipulated that either party may use upon the hearing hereof, any rule contained in the defendant's rule book.

Dated July 23d, 1891.

ERWIN & WELLINGTON,
Attorneys for Plaintiff.
JNO. C. BULLITT, JR.,
Defendant's Attorney.

STATE OF WASHINGTON, } ss:
County of Pierce, }

George R. Fewlas, being first duly sworn upon oath, deposes and says:

That he is of the age of 36 years, and is now a resident of Ellensburgh, Wash.; that on March 14, 1890, he was then the conductor of an extra train running west from Ellensburgh, Washington, with a widener attached; that said train left Ellensburgh some time during the forenoon of March 14th, 1890, with orders to go from Ellensburgh to Weston, Washington; that said train at that time consisted of an engine, a caboose and a snow-widener behind the caboose. Said train ran to Easton, where it stopped for dinner; at Easton affiant received from the train-dispatcher at Ellensburgh, by wire, the following order, viz:

"Order No. 39. EBURG, 3, 14, '90.

Ellis and Fewlas and Eng'rs,
Easton:

Ellis will run wild from Easton to Weston looking out for Fewlas. Extra ahead. Two 2 extras west. Fewlas and Ellis will meet extra east MacMasters at Stampede.

12 C. S. P.

39 O. K. 1:40 P. M. F. Reed.
13 Fewlas, Greene, Opr.
13 Ellis,
13 Brothers."

That the crew of affiant's train was composed of Reed, engineer; fireman, name unknown, and Mr. Royer and Ralph Peterson, brakeman, together with affiant, conductor; that said train composed as above stated, left Easton at 1.40 p. m., March 14th, 1890, at 12 once upon receiving the foregoing order, and moved very slowly on account of the widener being attached; that the crew of said train were afraid that the widener would not clear the bridges and show-sheds; that said train ran at an average rate of about five or six, or at least not over eight, miles per hour from the time it left Easton until it arrived at bridge No. 146, which was between two and two and one-half miles west of Easton; that upon approaching said bridge, which was the first bridge west of Easton, the train slowed up and stopped because the widener would not clear the bridge; that the crew of the train then began to take in the wings of the widener.

That immediately upon the train stopping at the bridge affiant heard a rotary engine coming up west behind his train and affiant at once started to go back to flag the rotary plow; that affiant ran back and had reached about half way to the last snow-shed, which was about five rail's length from the shed, when affiant saw the rotary plow coming out of the snow-shed at the rate of twelve to fifteen miles per hour; that affiant flagged said rotary plow, which answered the flag by blowing the whistles for brakes; that then affiant at once started to run back to save his own life; that the snow at that place was so high upon each side of the track at that time that it was impossible to get off the track without going some distance forward or back; that affiant ran almost back to the bridge before he was able to get off the track, and affiant barely managed to clear himself from getting caught by the rotary; that the rotary almost immediately after that collided with the widener; this collision occurred about 2.05 p. m., and affiant's train had not been stopped more than 1½ or 2 minutes; that immediately after affiant's train stopped, and as affiant started back to flag the rotary, he saw Peterson standing on the widener; Royer was also on the widener together with Mr. Hamill, as affiant believes; Mr. Hamill, roadmaster, Mr. Frame, conductor, and Mr. Stephens, chief train-dispatcher, were riding on the train with affiant; that just prior to the collision Mr. Frame and Mr. Stephens had just got on the ground

behind the widener; that Mr. Borderfield and Mr. Hamill were pulling the widener in; that after affiant jumped from the track the first thing he saw was Mr. Hamill, Mr. Stephens and Mr. Frame rolling down the bank into the snow; that affiant also saw Royer — off of the bridge, and also saw the rotary strike the car behind the caboose as he jumped from the track; that affiant's attention was so taken up in caring for himself that he could not see what all of the other parties were doing at the time of the collision; that affiant did not see Ralph Peterson from the time affiant started to go back to flag the rotary until after the collision; that affiant then heard some one hallooing, and he started to see who it was; that when affiant got up to the caboose he found Peterson near the forward end of the caboose with his arm driven fast in the caboose by the widener behind which had passed nearly through the caboose; that when the rotary struck the car behind the
13 caboose, to which the widener was attached, the drawbar of the widener jumped over the caboose platform, driving the platform of the widener through the caboose and cutting the top of the car nearly off; that when affiant arrived Peterson was hallooing, and Engineer Reed was holding Peterson up and calling for help to bring an axe and pinch-bar to cut Peterson out; that Peterson was held fast between the two cars by his arm; that a pinch-bar was obtained and Peterson was pried out; that Peterson's hand and wrist were badly mashed, and his back was badly hurt and his clothes were torn from his back; that the collision occurred with such force that the engine and caboose of affiant's train were driven nearly two car-lengths on the bridge, the caboose was thrown off of the rails and the widener driven off of the track; that Peterson was afterwards taken to Easton on a light engine and sent to Ellensburgh where he had his hand amputated; that affiant's train at the time was running pursuant to the orders received from train-dispatcher, but was obliged to run slowly as the widener was a thing on trial; that a stop was necessary at the bridge to take in the wings to allow the widener to pass; that said stop was not of more than two minutes before the collision occurred.

GEO. E. FEWLAS.

Subscribed and sworn to before me this 6th day of July, 1891.

[NOTARIAL SEAL.] E. R. YORK,
Notary Public, Residing at Tacoma, Washington.

Indorsed: Stipulation of facts. Filed July 23rd, 1891. Oscar B. Hillis, clerk.

And on the 24th day of July, 1891, the following proceeding of court was had, to wit:

United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1891.

JULY 24TH, 1891—Friday Morning.

Court opened pursuant to adjournment.
Present: Hon. R. R. Nelson, judge.

* * * * * * *

RALPH PETERSON
vs.
NORTHERN PACIFIC RAILROAD COMPANY. } E. Law. 838.

A jury having been waived in this case and the same having been submitted to the court on a stipulation and statement of facts, now the court, after due consideration thereof, and being fully advised in the premises, finds for the plaintiff in the sum of four thousand dollars ($4,000.00). It is, therefore, considered, ordered
14 and adjudged that the above-named plaintiff do have and recover of and from the above-named defendant the aforesaid sum of four thousand dollars ($4,000.00), together with his costs and disburs-ments herein to be taxed, and that he have execution therefor.

* * * * * * *

(Term Minutes, volume 4, page 153.)

And on January 23rd, 1892, the following bill of exceptions was filed of record, to wit:

Bill of Exceptions.

United States Circuit Court, District of Minnesota, Third Division.

RALPH PETERSON, by FRANK H. ENCELL, His Guardian *at Litem*,
Plaintiff,
vs.
NORTHERN PACIFIC RAILROAD COMPANY, Defendant.

This action came on for trial at the June term of said court for 1891, at St. Paul, Minnesota, on the 24th day of July, A. D. 1892, before Hon. R. R. Nelson, without a jury, it being stipulated in open court by the parties thereto that the case should be tried without a jury; and thereupon it was stipulated and agreed between the parties that the facts in this case, in addition to those facts established by the pleadings, are as follows:

The plaintiff was, on March 14th, 1890, in the employ of the defendant as a brakeman, and had been so employed in that capacity for some time prioer thereto. His duties were those ordinarily and usually pertaining to that branch of railway employment, and he was competent and skillful in every way, and familiar with the method of operating trains over said roads, and also familiar with the defendant's rules.

On said date he started out as a brakeman upon a train, hereinafter designated as train one, running from Easton, a point on defendant's railway on Washington, westwardly in said State of Washington. Said train went out over defendant's railway for the purpose of testing what is called and known as a "widener," an appliance designated to remove snow from the side of the railway tracks.

At the time in question there was a large quantity of snow accumulated upon and along the defendant's railway tracks.

Said train was being operated by what is known as telegraph orders. The method of operating trains in this way was known to plaintiff. The rules of defendant for such operating are found on pages 36 to 49 inclusive, of defendant's rule book, and are numbere- 114 to 136 inclusive, and are hereby made a part of this stipulation as fully as is set out in full herein.

15 The order — which said train left Easton and ran westwardly on the defendant's road, and the facts relating to the accident are stated in the affidavit of George E. Fewlas, hereto attached and made a part of this stipulation. Said order was issued by the train-dispatcher of defendant, located at Ellensburgh, Washington, who had charge of the operation of said train, and also the train which ran into said train, hereafter designated as train two, over said railway.

After train one had left Easton, train two also left said Easton and proceeded westward, and by the negligence of the conductor and engineer of this train two, ran into said train one, as described in the affidavit of Fewlas. The negligence of the conductor and engineer of said train two was the proximate cause of the injury complained of, in not observing the instructions contained in said order given to them by said train-dispatcher.

Said order was duly given to the conductor and engineer of train one and train two before either of the trains left Easton; the conductor of train one being Fewlas and the conductor of train two being Ellis.

The damages sustained by the plaintiff by reason of the loss of his arm are agreed upon by the parties as being four thousand dollars ($4,000.00).

It is further stipulated that either party may use upon the hearing hereof any rule contained in the defendant's rule book.

STATE OF WASHINGTON, } ss:
County of Pierce, }

George E. Fewlas, being first duly sworn, upon oath deposes and says:

That he is of the age of 36 years, and is now a resident of Ellensburgh, Wash.; that on March 14th, 1890, he was the conductor of an extra train running west from Ellensburgh, Washington, with a widener attacked; that said train left Ellensburgh some time during the forenoon of March 14th, 1890, with orders to go from Ellensburgh to Weston, Washington; that said train at that time cou-

sisted of an engine, a caboose, and a snow-widener behind the caboose.

Said train ran to Easton, where it stopped for dinner; at Easton affiant received from the train-dispatcher at Ellensburgh, by wire, the following order, viz:

" Order No. 39. EBURG, 3, 14, '90.

Ellis and Fewlas, and Eng'rs,
Easton.

Ellis will run wild from Easton to Weston, looking out for
16 Fewlas. Extra ahead. Two 2 extras west. Fewlas and Ellis will meet extra east MacMasters, at Stampede.
12 C. S. P.

39 O. K. 140 P. M. F. Reed.
13 Fewlas. Greene, Opr.
13 Ellis.
13 Brothers."

That the crew of affiant's train was composed of Reed, engineer; fireman, name unknown, and Mr. Royer and Ralph Peterson, brakeman, together with affiant, conductor; that said train, composed as above stated, left Easton at 1.40 p. m., March 14th, 1890, at once upon receiving the foregoing order, and moved very slowly on account of the widener being attached; that the crew of said trains were afraid that the widener would not clear the bridges and snow-sheds; that said train ran at an average rate of about five or six, or at least, not over eight, miles per hour from the time it left Easton until the time it arrived at bridge No. 146, which was between two and two and one-half miles west of Easton.

That upon approaching said bridge west of Easton, the train slowed up and stopped because the widener would not clear the bridge; that the crew of the train then began to take in the wings of the widener.

That immediately upon the train stopping at the bridge affiant heard the rotary engine coming up west behind his train, and affiant at once started to go back to flag the rotary plow.

The affiant ran back and had reached about half way to the last snow-shed, when affiant saw the rotary plow coming out of the snow-shed at a rate of twelve to fifteen miles per hour, that affiant flagged said rotary plow, which answered the flag by blowing the whistle for brakes; that affiant then at once started to run back to save his own life; that the snow at that place was so high upon each side of the track at that time that it was impossible to get off the track without going some distance forward or back; that affiant *ean* almost back to the bridge before he was able to get off the track, and affiant barely managed to clear himself from getting caught by the rotary; that the rotary almost immediately after that collided with the widener; the collision occurred at about 2.05 p. m., and affiant's train had not been stopped more than 1½ or 2 minutes.

That immediately after affiant's train stopped and as affiant

started back to flag the rotary he saw Peterson standing on the widener; R. Royer was also on the widener, together with Mr. Hamill, as affiant believes; Mr. Hamill, roadmaster; Mr. Frame, conductor, and Mr. Stephens, chief train-dispatcher, were riding on the train with affiant.

That just prior to the collision Mr. Frame and Mr. Stephens had just got on the ground behind the widener; that Mr. Borderfield and Mr. Hamill were pulling the widener in; that after affiant jumped from the track the first thing he saw was Mr. Hamill, Mr. Stephens and Mr. Frame rolling down the bank into the snow; that affiant also saw Royer jump off of the bridge and also saw the rotary strike the car behind the caboose as he jumped from the track.

17

That affiant's attention was so taken up in caring for himself that he could not see what all of the other parties were doing at the time of the collision.

That affiant did not see Ralph Peterson from the time affiant started to go back to flag the rotary until after the collision; that affiant then heard some one hallooing, and he started to see who it was; that when affiant got up to the caboose he found Peterson near the forward end of the caboose with his arm driven fast in the caboose by the widener behind, which had passed nearly through the caboose; that when the rotary struck the car behind the caboose, to which the widener was attached, the drawbar of the widener jumped over the caboose platform, driving the platform of the widener through the caboose and cutting the top of the car nearly off; that when affiant arrived Peterson was hallooing and Engineer Reed was holding Peterson up and calling for help to bring an axe and pinch-bar to cut Peterson out; that Peterson was held fast in between the two cars by his arm; that a pinch — was obtained and Peterson was pried out; that Peterson's hand and wrist were badly smashed, and his back was badly hurt and his clothes were torn from his back; that the collision occurred with such force that the engine and caboose of affiant's train were driven nearly two car-lengths on the bridge, the caboose was thrown off the rails and the widener driven off the track; that Peterson was afterwards taken to Easton on a light engine and sent to Ellensburgh, where he had his hand amputated; that affiant's train at the time was running pursuant to the orders received from the train-dispatcher *b*, but was obliged to run slow, as the widener was a new thing on trial; that a stop was necessary at the bridge to take in the wings to allow the widener to pass; that said stop was not of more than two minutes before the collision occurred.

GEO. E. FEWLAS.

Subscribed and sworn to before me this 6th day of July, 1891.

E. R. YORK,

[SEAL.] *Notary Public, Residing at Tacoma, Washington.*

Thereupon the following rules hereto attached were introduced and marked "Exhibit*ed* A," and admitted as the rules and

regulations of the defendant which were admitted to be in force on the line of defendant's railroad at the time of plaintiff's injury.

18 Thereupon the court, upon the foregoing facts ordered judment for the plaintiff in the sum of four thousand dollars, and costs and disbursements, being the amount that was stipulated damages should be assessed if the court found that the plaintiff should recover; to which order the defendant then and there duly excepted, which exception was allowed, and thereupon judgment was entered in accordanc*dance* with said order, as appears by the records in said cause.

And because the foregoing matters and things do not appear of record in said action, the judge who tried said cause finding the same to be true and correct, has signed and sealed this bill of exceptions this 23rd day of January, 1892, and ordered the same to be made a part of the record of said action.

R. R. NELSON, *Judge.*

St. Paul, Minn., Jan. 23rd, 1892.

It is hereby stipulated by and between the attorneyes to this action that the foregoing may be signed, settled and allowed by the court as a "bill of exceptions" to be used upon appeal of this case.

ERWIN & WELLINGTON,
Plaintiff's Attorneys.
JNO. C. BULLITT, JR., &
TILDEN R. SELMES,
Defendant's Attorneys.

EXHIBIT "A"—RULES.

81. Whenever one train is to follow another on the same time (which must never occur ascending mountain grades), notice must be given to the forward train and the conductor thereof must notify in person all conductors whom he may meet at stations where he stops of the facts, besides carrying the proper signal. One train following another must be kept at least one mile behind, except as stations or tanks, which must be approached with great care.

157. Conductors will be held responsible for the safe management of their trains and for the strict performance of duty on the part of the men engaged with them. In order to secure effective work, conductors must make themselves familiar with the duties required from other train employés and see that they are fully performed.

114. In moving trains by special order, each *section* shall be taken and considered as a *separate and distinct train*, and shall receive and run only under special orders addressed to *its own* conductor and engineer.

19 115. All orders for the movement of trains by telegraph will be addressed to the conductor and engineer, and written by the receiving operator on manifold paper, so arranged that three

impressions shall be taken. The conductor and engineer so addressed shall read the order carefully, and, if understood, shall sign it, adding train number which must be transmitted with it. It will then be repeated *v*back over their signatures to the dispatcher, who will, if the order is correctly repeated reply, "Order number" (give number) "is O. K.," sign and give time, all of which must be recorded on the order, and the whole countersigned by the receiving operator. One impression of the order, when properly signed, will be given to the conductor and one to the engineer. The third impression must be kept by the operator in his manifold book. Receiving operators must not, *under any circumstances*, repeat an order back until the *personal signatures* of the conductor and engineer are first obtained.

115½. When orders are sent to a train at a non-telegraph station through the medium of the conductor and engineer of another train, the conductor and engineer carrying the order will send back their understanding to the dispatcher; the order can then be delivered to the other train and have the same force and effect as though signed by them.

116. All orders and messages relative to the movement of trains must be written in full, and no abbreviations used except the telegraph abbreviations, "12" (How do you understand?), and "13" (I understand). Figures must be written out in full and duplicated; thus, twelve thirty (12:30).

117. A special order for the movement of trains, sent by telegraph, *has no force or value* until the understanding of the conductor and engineer has been repeated to the person giving the order, and been approved by him as "O. K.," and not then under approval is entered upon the order and the operator has signed his own name thereon. When by reason of the telegraph failing, or from any other cause, the understanding cannot be sent or "O. K." given, *the order is void and will be so considered by all concerned.*

118. Both conductors and engineers shall sign their names to the order; neither shall sign for the other, nor the operator or any other person for either of them, under any pretext whatever.

119. A train shall not be started to run by special order unless both the conductor and engineer have a copy of the order complete, as prescribed in rule 115, in their possession; nor until they have compared the copies of the order one with the other, and with the understanding given, and know that they agree. Operators must not allow a copy of an order to leave their possession until complete, as prescribed in rule 117; not "O. K." thereon in advance of its receipt, nor sign their names thereon until the order is otherwise all complete.

120. Alterations, interlineations and erasures must not appear on orders delivered to trainmen. Should it be necessary to make any change in first copy the dispatcher must repeat the entire order and a new copy be made by receiving operator.

121. Not more than one person on a district or division shall be permitted at the same time to give special orders for the movement of trains.

122. Division superintendents and train-dispatchers under their directions are the only persons authorized to give such orders, and the authority is limited to their respective divisions or districts.

123. Train-dispatchers shall only give orders in the name of the division superintendent, adding thereto the initial of their own.

124. A transfer of the authority to give special order for the movement of trains shall not be made except in writing, containing a specific transfer of the authority and complete statement of all unexpired orders, and if done by telegraph, an understanding shall be returned before the authority is exercised by another person, and "O. K." given, as provided for special orders in rule 117.

125. When orders are awaiting the arrival of a train, the operator must display a red signal. On sight of said signal at a telegraph station, conductors and engineers *must go at once* to the office to receive and respond to orders.

The red signal must invariably be lighted after dark, and in complete readiness for instant use. Conductors and engineers must keep a careful watch for this signal at telegraph stations; and when seen, the train must be brought to a full stop, and they must ascertain from the operator in charge the object of the signal. If the orders are not for their train, *they must each obtain a clearance to that effect* from the operator in charge. These *clearances must be* turned in at the end of each round trip to dispatchers, and his receipt taken for same on car book.

126. The absence of a signal at any telegraph station between the hours of 7 a. m. and 7 p. m. or the showing of a white signal *at the place where the train-order signal is displayed* is clearance so far as it relates to train orders, but at all night telegraph offices (see list on time-card and changes must be bulletins and wired to trains liable to be effected) between the hours of 7 p. m. and 7 a. m. all trains will consider themselves held for orders unless they receive a clearance as per rule 125. In the absence of a white signal at any night telegraph office, during night, trains must be brought to a full stop and position of signal-board ascertained before proceeding. Report all such cases to superintendent.

21

127. When a train is held for orders by a "13" order, *they cannot be released by any form of clearance* or notice of bad track or bridges unless the holding order is recalled. *It requires a regular "13" order to release a train held for orders by a "13" order.*

128. When an operator receives an order to flag and hold a train for orders, the "13" *must not be sent back* until the dispatcher is notified "*my signal displayed.*" At change of night and day operator, the relieving operator will sign holding orders, and have them repeated to dispatcher for his O. K.

129. In giving orders against passenger trains dispatchers will in every case get the understanding from conductors and engineers of trains having the right to the road, before moving any trains against them, except at terminal stations, where dispatchers may depend upon operator. Red signal and the signatures of agent and yard-master with the operator are preferable, but if they cannot be obtained, then the signature of any other responsible employé will

answer. If it is not possible to obtain the additional signatures without serious delay, and the train to be held is obliged to pass the telegraph office before it can leave the station, then the red signal and the operator's signature can be used for moving trains against, but the operator must secure the additional signatures as soon as possible. If, however, the train can pull out of the yard without passing the telegraph office, then *under no circumstances* will trains be moved against it until the three signatures are obtained to the order.

130. The general rule to be observed in moving freight trains against each other is to obtain the understanding of the conductor and engineer of the train having the right to the road before running any train against them. If, however, the conditions are favorable for holding freight trains through the operator, and serious delays can be avoided thereby, dispatcher can depend upon the signature of the operator, red signal and torpedoes to hold such ruling train for orders at any telegraph station, other than the meeting point, and in extreme cases trains can be held for each other at the meeting points by putting out red signals and torpedoes 1,000 feet in both directions from the telegraph office, in addition to the red signals and torpedoes at the telegraph office. When there is no telegraph office at the meeting point, the red signal and torpedoes must be used for holding at the telegraph office distant from the meeting point. At terminal stations freight trains can be held as provided in rule 129.

131. Before any train is moved against an operator's red light, it will be the duty of the dispatcher to inquire of the operator
22 the condition of his signal lamps and the number of torpedoes he has on hand, and at seven o'clock each night all night offices will report the condition of red lamps and number of torpedoes on hand.

132. Every precaution must be taken to prevent orders from being forgotten and to this end avoid holding trains beyond too many telegraph stations.

132½. Train or engine men are positively prohibited from going to meals or delaying their trains for any cause after receiving an order which allows them to proceed, without first obtaining express permission to do so from the train-dispatcher, and when such permission is received the conductor must report when he is ready to go and ascertain *is* any further orders for him.

Indorsed: Bill of exceptions. Filed January 23rd, 1892. Oscar B. Hillis, clerk.

Stipulation.

United States Circuit Court of Appeals, Eighth Circuit.

NORTHERN PACIFIC RAILROAD COMPANY, Plaintiff in Error,
vs.
RALPH PETERSON, Defendant in Error. } No. 107.

It is hereby stipulated by counsel for the respective parties, that the clerk of the United States circuit court of appeals be, and he is hereby authorized and directed to insert immediately following the bill of exception, in the transcript of record from the circuit court of the United States, for the district of Minnesota, and in the record to be printed in the above cause, the attached certified copy of the assignment of errors.

JNO. C. BULLITT, JR., &
TILDEN R. SELMES,
Counsel for Plaintiff in Error.
ERWIN & WELLINGTON,
Counsel for Defendant in Error.

Assignments of Error.

United States Circuit Court, District of Minnesota, Third Division.

RALPH PETERSON, Plaintiff,
vs.
NORTHERN PACIFIC RAILROAD COMPANY, Defendant.

Now comes the above-named defendant by Jno. C. Bullitt, Jr., and Tilden R. Selmes, its attorneys, and says that in the record of proceedings in said court in the above-entitled action and also in giving judgment in said action there is manifest error in this:

23 That the court erred in ordering that judgment be entered for the plaintiff upon the facts as stipulated in said action in that:

(*a.*) The negligence as shown by the stipulated facts which caused the injuries for which the plaintiff seeks to recover was the negligence of a fellow-servant in the same line of employment with the plaintiff and not the negligence of the defendant or a servant or employé for whose negligence it would be responsible to the plaintiff.

And the said defendant prays that the judgment aforesaid rendered against it in this action for the errors aforesaid and the other many and manifest errors in the said record and proceedings aforesaid, may be reversed, canceled and altogether held for nothing, and that it may be restored in all things which is has lost by occasion of said judgment.

JNO. C. BULLITT, JR., &
TILDEN R. SELMES,
Attorneys for Defendant.

Indorsed: Filed Jan'y 23, '92. Oscar B. Hillis, clerk.

UNITED STATES OF AMERICA, *District of Minnesota, Third Division,* } *sct:*

I, Oscar B. Hillis, clerk of the circuit court of the United States for the district of Minnesota, do hereby certify that I have carefully compared the foregoing paper-writing with the original thereof, which is in my custody as such clerk, and that such copy is a correct copy of such original and of the whole thereof in the cause therein named.

Seal of the U. S. Circuit Court, Dist. of Minnesota, Third Division.

Witness my hand as clerk, and the seal of said court. Done at my office, in Saint Paul, Minnesota, this 1st day of April, A. D. 1892.

OSCAR B. HILLIS, *Clerk,*
By —— ——, *Deputy.*

No. —. United States circuit court, district of Minnesota, third division. Ralph Peterson, plaintiff, *vs.* Northern Pacific R. R. Company, defendant. Stipulation and certified copy of the assignments of error. Filed Apr. 11, 1892. John D. Jordan, clerk.

UNITED STATES OF AMERICA:

Circuit Court of the United States, District of Minnesota, Third Division.

I, Oscar B. Hillis, clerk of said circuit court, do hereby certify and return to the honorable, the United States circuit court of appeals for the eighth circuit, that the foregoing, consisting of 45 pages, numbered consecutively from 1 to 45 inclusive, is a true and
24 complete transcript of the records, process, pleadings, orders, final judgment and all other proceedings in said cause and of the whole thereof, as appears from the original records and files of said court, and I do further certify and return that I have annexed to said transcript, and included within said paging, the original citation, together with the proof of service thereof.

Seal of the U. S. Circuit Court, Dist. of Minnesota, Third Division.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Saint Paul, in the district of Minnesota, this — day of February, A. D. 1892.

OSCAR B. HILLIS, *Clerk,*
By —— ——, *Deputy.*

Filed Mar. 23, 1892.

JOHN D. JORDAN, *Clerk.*

25 And on the twenty-ninth day of April, A. D. 1892, an appearance of counsel for plaintiff in error was filed in the clerk's office of said circuit court of appeals in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, October Term, 189–.

NORTHERN PACIFIC RAILROAD COMPANY, Pl'ff in Error,
vs.
RALPH PETERSON, Def't in Error.

The clerk will enter my appearance as counsel for the plaintiff in error.

JNO. C. BULLITT, JR., &
TILDEN R. SELMES.

Endorsed: "U. S. circuit court of appeals, eighth circuit. 1891, October term. No. 107. Northern Pacific Railroad Company *vs.* Ralph Peterson. Appearance. Filed Apr. 29, 1892. John D. Jordan, clerk. Jno. C. Bullitt, Jr., & Tilden R. Selmes, counsel for pl'ff in error."

And on the thirteenth day of May, A. D. 1892, an appearance of counsel for defendant in error was filed in the clerk's office of said circuit court of appeals in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, October Term, 1891.

NORTHERN PACIFIC RAILROAD COMPANY, Plaintiff in Error,
vs.
RALPH PETERSON.
No. 107.

The clerk will enter my appearance as counsel for the defendant in error.

C. WELLINGTON.

Endorsed: "U. S. circuit court of appeals, eighth circuit. 1891, October term. No. 107. Northern Pac. R. R. Co. pl'ff in
26 error, *vs.* Ralph Peterson. Appearance. Filed May 13, 1892. John D. Jordan, clerk. C. Wellington, St. Paul, Minn., counsel for def't in error."

And on the fourteenth day of June, A. D. 1892, in the record of the proceedings of said circuit court of appeals is an entry in said cause in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, October Term, 1891.

NORTHERN PACIFIC RAILROAD COMPANY, Plaintiff in Error,
vs.
RALPH PETERSON, Defendant in Error. } No. 107.

In error to the circuit court of the United States for the district of Minnesota.

TUESDAY, *June* 14, 1892.

This cause, having been called for hearing in its regular order, was, by stipulation and consent of parties, submitted to the court upon the arguments made and briefs filed in the case of Northern Pacific Railroad Company, plaintiff in error, *vs.* Michael C. Cavanaugh, No. 108, and the judgment to be entered in this case to be the same as entered in said case No. 108.

27 And on the twenty-fifth day of July, A. D. 1892, in the record of the proceedings of said circuit court of appeals is a judgment in said cause in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, October Term, 1891.

NORTHERN PACIFIC RAILROAD COMPANY, Plaintiff in Error,
vs.
RALPH PETERSON, Defendant in Error.

In error to the circuit court of the United States for the district of Minnesota.

MONDAY, *July* 25, 1892.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Minnesota and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause, pursuant to the stipulation of the parties to the effect that the judgment entered in this case should be the same as that entered in the case of The Northern Pacific Railroad Company, plaintiff in error, *vs.* Michael C. Cavanaugh, defendant in error, be, and the same is hereby, affirmed with costs, and that the said Ralph Peterson recover against the Northern Pacific Railroad Company twenty dollars for his costs herein and have execution therefor.

July 25, 1892.

And on the thirteenth day of August, A. D. 1892, there was filed in the clerk's office of said circuit court of appeals, *nunc pro tunc* as of June 14th, 1892, a stipulation as to judgment in words and figures following, to wit:

United States Circuit Court of Appeals for the Eighth Circuit.

NORTHERN PACIFIC RAILROAD COMPANY, Plaintiff in Error,
vs.
28 RALPH PETERSON, Defendant in Error.

It is hereby stipulated that the judgment in the above-entitled case shall be the same as the judgment entered or to be entered in the case of Northern Pacific Railroad Company, plaintiff in error, *vs.* Michael C. Cavanaugh, defendant in error, and the clerk is hereby instructed and authorized to enter said judgment in said case.

Dated August 11th, 1892.

JNO. C. BULLITT, JR.,
Attorney for Plaintiff in Error.
ERWIN & WELLINGTON,
Attorneys for Defendant in Error.

Endorsed: "No. 107. Northern Pacific R. R. Co., plaintiff in error, *vs.* Ralph Peterson. Stipulation as to judgment in circuit court of appeals. Filed Aug. 13, 1892, as of June 14, 1892. John D. Jordan, clerk."

And on the tenth day of December, A. D. 1892, there was filed in the clerk's office of said United States circuit court of appeals a petition for writ of error in words and figures following, to wit:

United States Circuit Court of Appeals for the Eighth Circuit.

NORTHERN PACIFIC RAILROAD COMPANY, Plaintiff in Error,
vs.
RALPH PETERSON, Defendant in Error.

To the honorable judges of the United States circuit court of appeals for the eighth circuit:

Your petitioner, The Northern Pacific Railroad Company, the plaintiff in error in the above-entitled cause, respectfully shows that by the judgment heretofore rendered by said United States circuit court of appeals for the eighth circuit in the above-entitled
29 cause a manifest error hath happened, to the great damage of your petitioner, in this: that a great and manifest error of law occurred at the trial of said cause against the objection of your petitioner and to its great damage, all of which will more fully appear by the record of said court in said case.

Wherefore your petitioner prays your honors to allow a writ of error from the Supreme Court of the United States to be directed to the said United States circuit court of appeals for the eighth circuit, whereby, under the seal of said United States circuit court of appeals for the eighth circuit, the record and proceedings aforesaid, with all things concerning the same, may be transmitted to the Supreme Court of the United States with said writ of error, and that, the record and proceedings aforesaid being duly inspected, the said Su-

preme Court of the United States will cause further to be done therein and correct that error what of right and according to the laws and customs of the United States should be done.

JOHN H. MITCHELL, JR., &
TILDEN R. SELMES,
Attorneys for Petitioner.

Endorsed: "N. P. R. R. Co., pl'ff in error, *vs.* Ralph Peterson, def't in error. Petition. Filed Dec. 10, 1892. John D. Jordan, clerk."

And on the tenth day of December, A. D. 1892, there was filed in the clerk's office of said United States circuit court of appeals an assignment of errors in words and figures following, to wit:

United States Supreme Court.

NORTHERN PACIFIC RAILROAD COMPANY, Plaintiff in Error,
vs.
RALPH PETERSON, Defendant in Error.

Assignments of Error.

Now comes the above-named plaintiff in error, The Northern Pacific Railroad Company, by Tilden R. Selmes, its attorney, and says that in the record and proceedings in the above-entitled action in the United States circuit court of appeals for the eighth circuit there is manifest error, in this, to wit:

30 First. The plaintiff in error assigns as error the several errors set out in the assignments of error forming part of the record in the above-entitled action before said circuit court of appeals, in, to wit, that said circuit court for the district of Minnesota erred in ordering that judgment be entered in favor of the plaintiff on the facts as stipulated in said action, in that—

(*a.*) The negligence as shown by the stipulated facts which caused the injuries for which the plaintiff seeks to recover was the negligence of a fellow-servant in the same line of employment with the plaintiff, and not the negligence of the defendant or a servant or employé for whose negligence it would be responsible to the plaintiff.

Second. The said circuit court of appeals, before which was heard the writ of error which brought up the record in this action from the circuit court of the United States for the district of Minnesota to said circuit court of appeals, erred in making its order on the ——, affirming the judgment of the said circuit court and directing a mandate to issue to the circuit court of the United States for the district of Minnesota, directing that court to proceed in accordance with the decision and order of the said circuit court of appeals.

Third. That said circuit court of appeals erred in not sustaining the writ of error then before it and not reversing the judgment en-

tered in this action in said circuit court and in not directing a new trial of the issues raised by the pleadings in said action.

And the said Northern Pacific Railroad Company, the plaintiff in error, prays that the judgment aforesaid entered herein in the circuit court for the district of Minnesota and the order entered herein as aforesaid by the circuit court of appeals and the judgment of affirmance to be entered in said circuit court for the district of Minnesota upon said order of affirmance, for the errors aforesaid and for other errors in the record and proceedings aforesaid, be reversed, annulled, and altogether held for naught, and that the plaintiff in error may be restored *in* all things which it hath lost by occasion of said judgments and order.

JOHN H. MITCHELL, JR., &
TILDEN R. SELMES,
Attorneys for Plaintiff in Error.

31 Endorsed: "N. P. R. R. Co., pl'ff in error, *vs.* Ralph Peterson, def't in error. Assignments of error. Filed Dec. 10, 1892. John D. Jordan, clerk."

And on the tenth day of December, A. D. 1892, there was filed in the clerk's office of said United States circuit court of appeals a supersedeas bond in words and figures following, to wit:

United States Circuit Court of Appeals for the Eighth Circuit.

NORTHERN PACIFIC RAILROAD COMPANY, Plaintiff in Error,
vs.
RALPH PETERSON, Defendant in Error.

Know all men by these presents that we, said Northern Pacific Railroad Company, a corporation created by and existing under an act of Congress of the United States of America entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget sound, on the Pacific coast, by the northern route," approved July 2, 1864, by Tilden R. Selmes, its attorney, as principal, and Frank A. Seymour, of St. Paul, Minnesota, and Geo. C. Power, of St. Paul, Minnesota, as sureties, are held and firmly bound unto the above-named Ralph Peterson in the sum of five thousand dollars, lawful money of the United States of America, to be paid to the said Ralph Peterson, his executors, administrators, and assigns; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, and the successors and assigns of said company, jointly and severally, by these presents.

Sealed with our seals and dated this 15th day of November, in the year of our Lord one thousand eight hundred and ninety-two.

Whereas the above-named Northern Pacific Railroad Company has prosecuted a writ of error in the Supreme Court of the United States to the circuit court of appeals for the eighth circuit to reverse an order made by the said United States circuit court of appeals

herein, directing that a mandate issue to the circuit court
32 of the United States for the district of Minnesota, which mandate directs said circuit court to enter judgment affirming the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the district of Minnesota:

Now, therefore, the condition of this obligation is such that if the above-named Northern Pacific Railroad Company shall prosecute said writ of error to effect and answer all damages and costs if it shall fail to make its plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

NORTHERN PACIFIC RAILROAD COMPANY,
By TILDEN R. SELMES, *Attorney.*
FRANK A SEYMOUR. [SEAL.]
GEO. C. POWER. [SEAL.]

Approved as a supersedeas.

DAVID J. BREWER,
Justice Sup. Ct.

UNITED STATES OF AMERICA, }
District of Minnesota. }

Frank A. Seymour and Geo. C. Power, being severally duly sworn, each for himself deposes and says that he is one of the sureties who executed the foregoing bond; that he, said Frank A. Seymour, is a resident and freeholder, and he, said Geo. C. Power, is a resident and freeholder in said district of Minnesota, and is worth the sum of five thousand dollars over all his just debts and liabilities.

FRANK A. SEYMOUR.
GEO. C. POWER.

Sworn to before me this 15th day of November, 1892.

[SEAL.] A. L. AYLESWORTH,
Notary Public, Ramsey Co., Minn.

Endorsed: "N. P. R. R. Co., pl'ff in error, *vs.* Ralph Peterson, def't in error. Bond. The within bond is satisfactory, and as the attorney for respondent Peterson I approve the same. C. Wellington, att'y for Ralph Peterson. Filed Dec. 10, 1892. John D. Jordan, clerk."

33 And on the tenth day of December, A. D. 1892, there was filed in the clerk's office of said United States circuit court of appeals a præcipe for writ of error in words and figures following, to wit:

United States Circuit Court of Appeals for the Eighth Circuit.

NORTHERN PACIFIC RAILROAD COMPANY, Plaintiff in Error,
vs.
RALPH PETERSON, Defendant in Error.

To the clerk of the Supreme Court of the United States:

Please issue a writ of error to the Supreme Court of the United States in the above-entitled action and oblige—

JOHN H. MITCHELL, JR.,
TILDEN R. SELMES,
Attorneys for Petitioner.

Endorsed: "N. P. R. R. Co., pl'ff in error, *vs.* Ralph Peterson, def't in error. Præcipe. Filed Dec. 10, 1892. John D. Jordan, clerk."

And on the tenth day of December, A. D. 1892, a writ of error was filed in the clerk's office of said circuit court of appeals in said cause, the original of which is hereto attached and herewith returned:

34 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the United States circuit court of appeals for the eighth circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said United States circuit court of appeals, before you or some of you, between The Northern Pacific Railroad Company, plaintiff in error, and Ralph Peterson, defendant in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 30 days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 8th day of December, in the year of our Lord one thousand eight hundred and ninety-two.

Seal of the Supreme Court of the United States.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] N. P. R. R. Co, pl'ff in error, *vs.* Ralph Peterson, def't in error. Writ of error. Filed Dec. 10, 1892. John D. Jordan, clerk.

Return to Writ.

UNITED STATES OF AMERICA, *Eighth Circuit,* } *ss:*

In obedience to the command of the within writ I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, with all things concerning the same.

Seal United States Circuit Court of Appeals, Eighth Circuit.

In witness whereof I hereto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, Missouri, this third day of January, A. D. 1893.

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

35 And on the twenty-ninth day of December, A. D. 1892, a citation was filed in the clerk's office of said circuit court of appeals, the original of which is hereto attached and herewith returned:

36 United States Circuit Court of Appeals for the Eighth Circuit.

NORTHERN PACIFIC RAILROAD COMPANY, Plaintiff in Error,
vs.
RALPH PETERSON, Defendant in Error.

To Ralph Peterson, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the said United States circuit court of appeals for the eighth circuit, wherein The Northern Pacific Railroad Company is plaintiff in error and you are the defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable David J. Brewer, associate justice of the Supreme Court of the United States, this eighth day of December, A. D. 1892.

DAVID J. BREWER,
Associate Justice.

[Endorsed:] Original. N. P. R. R. Co., pl'ff in error, *vs.* Ralph Peterson, def't in error. Citation. Due service of the within citation is hereby admitted this 29th day of December, 1892. Erwin & Wellington, attorneys for def't in error. Filed Dec. 29, 1892. John D. Jordan, clerk.

37 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing pages, numbered from 1 to 36, inclusive, contain full, true, and complete copies of all the pleadings, proceedings, and record entries in the case of Northern Pacific Railroad Company, plaintiff in error, *vs.* Ralph Peterson, defendant in error, No. 107, October term, 1891, as the same remain upon the files and records of said United States circuit court of appeals.

I further certify that the original writ of error and citation in said cause are hereto attached and herewith returned.

Seal United States Circuit Court of Appeals, Eighth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of St. Louis, Missouri, this third day of January, A. D. 1893.

JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

Endorsed on cover: Case No. 15,239. U. S. circuit court of appeals, eighth circuit. Term No., 205. The Northern Pacific Railroad Company, plaintiff in error, *vs.* Ralph Peterson. Filed January 5, 1893.